D.B. CIVIL WRIT PETITION NO.3946/2006
(ICAR & Ors. Vs. Smt. Kalu Devi & Ors.)

Date of order : 20.12.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Pradeep Gehlot, for the petitioners.
Mr. L.D. Bhootra, for the respondent No.1.

Heard learned counsel for the parties.

The writ petition arises out of the order dated 27.1.2006 passed by Central Administrative Tribunal in Original Application No.162/2005 (Smt. Kalu Devi widow of late Goma ji Vs. Indian Council of Agricultural Research & Anr.).

The facts giving rise to this litigation were that late Shri Gomaji was initially appointed as Majdoor at Central Arid Zone Research Institute, Jodhpur in the year 1973 and was granted temporary status on the said post. Said Goma ji served the department uninterruptedly until 1.3.1992. Said Goma ji died while in service holding the temporary status as Majdoor in the department. The Original Application was filed when the widow claimed the family pension but was denied to the present petitioner inter alia on the ground that late Shri

Goma ji being in the temporary status his dependents were not entitled to family pension. It is contended that it is only after an incumbent is regularized that his dependents can get benefits of family pension. While, the applicant had claimed that services of Gomaji were regularized, once the orders have been passed from Labour Court to the Apex Court the employer had denied the fact of regularization, the Tribunal did not decide the issue about the status of the deceased employee, whether he was holding the permanent status or temporary at the time of his death, and had relied on its earlier decision in Smt. Santosh Vs. ICAR & Ors. (2004 (3) ATJ, 42 wherein it was held that even if the deceased servant was holding temporary status on the date of his death, his dependents were entitled to family pension by treating him to be regularized on the date of the death. That order has since been affirmed by this Court in a writ petition filed by the employer.

The order of the Tribunal dated 27.1.2006 was challenged through this writ petition inter alia on the ground that SLP has been preferred by UOI challenging the decision of this Court rendered in Smt. Santosh case and during the pendency of SLP, the order of the Tribunal and order of this Court and Smt. Santosh's case has been stayed.

When the matter was called up today for

hearing, it has been pointed out that since the admission of the writ petition on 11.8.2006, the Supreme Court has decided the appeal filed by ICAR in the case of Smt. Santosh and the said appeal has been allowed by setting aside the order of the Tribunal as well as High Court, holding that a person acquiring temporary status, if he dies while in service, he is not entitled to any family pension and Court cannot direct the regularization of his service as on the date of death.

In that view of the matter, since the very foundation of the order of the Tribunal, ceased to exist, this writ petition deserves to be allowed. However, the Tribunal has not entered into the controversy whether deceased services were regularized under the Rules or not. Accordingly, the writ petition is allowed. The order of the Tribunal is set aside and the case is remitted back to the Tribunal to consider the case of the original applicant on the anvil whether deceased Gomaji has actually been regularized on the date of his death so as to entitle his dependents to claim family pension.

No order as to the costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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